

Compass Chambers



# Update on Abuse Claims

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22 November 2024



# East Renfrewshire Council v William Wright

## 2024 SCLR 531

### BACKGROUND

- William Wright had been convicted of sexual assault and rape of D at a High School in the 1970s when he was a teacher there
- D had previously brought and settled a claim for historic abuse by Mr William Wright against East Renfrewshire Council on the basis of vicarious liability
- The case between D and East Renfrewshire Council settled at PTM (then represented by Amber and the council then being represented by the Dean)
- East Renfrewshire Council then brought an action against William Wright seeking to recover the sum that it had paid out to D and their expenses under Section 3(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940
- In the course of defending the action, William Wright wanted to have sight of the documents which underlay the settlement of the claim and so made a motion an order for commission and diligence for the recovery of documents. That motion was not opposed by East Renfrewshire Council, but was intimated on Thompsons as havers. Importantly, no intimation was made on D directly.



# East Renfrewshire Council v William Wright

## 2024 SCLR 531

- The specification of documents as originally framed sought to recover full medical records, all information relied on by the pursuer in arriving at their valuation of the claim, etc. It was very broad and would potentially have encompassed LPP material and reports prepared in contemplation of litigation
- By the time of the hearing, following discussions, specification had been restricted to the documents lodged in process by the pursuer. But did still call for the full and unexcepted medical records of D
- In my view ought to have sought both sides statements of valuation and the documents relied upon by both parties for the purposes of valuation so that the information was known



# East Renfrewshire Council v William Wright

## 2024 SCLR 531

### Issues Arising in the Case

- Anonymity for D – D had anonymity in her action against East Renfrewshire Council. Neither party had sought to anonymise D in the action between them. Nothing in the rules or practice notes but court had no hesitation (and in fairness once pointed out by Haver neither party opposed) an order for anonymization of D
- Requirement to Intimate the Application on D – Article 8 rights; balancing William Wrights' interest in securing a fair trial and D's right to privacy
- On behalf of William Wright it was argued that intimation not required at this stage and would
- Haver argued, citing Lord Glennie in *F v Scottish Ministers* that D ought to have the opportunity to argue relevancy of the documents, if so advised
- Court agreed with the Haver and refused William Wright's motion in hoc statu
- Ringfencing of D's sensitive information from abuser



# East Renfrewshire Council v William Wright

## 2024 SCLR 531

- A further motion was not enrolled and understand the parties have since settled the action
- Issues to consider in future cases:
  1. When suing for recovery of sums paid out in an action where pursuer had anonymity, agents to apply their mind to anonymity in the subsequent action
  2. Requirement to ensure that recovery of documents proceeds in a manner compliant with parties rights under ECHR
  3. Ringfencing of sensitive documents from hands of the abuser in cases involving actions brought against - parties agreed: “That such material recovered under commission and diligence will not be used or disclosed by the parties other than for the purpose of the preparation and conduct of the action or any reclaiming motion in respect of said action; and in relation to the Defender, such material will only be made available to the Defender’s agents and counsel; and will not be made available to Mr William Wright personally without further order of the court.”



# PW (AP) v KM [2024] CSOH 85

## BACKGROUND

- PBA in respect of an allegation of rape in 1995. Action not commenced until March 2019;
- Pursuer had history of mental health difficulty, and experienced periods of crisis;
- Matter of agreement that pursuer and defender had been alone one night in January 1995 (they were previously not known to each other);
- Pursuer's position: did not report as she was from a 'bad' /infamous local family and defender was policeman;
- Pursuer gave evidence at SCAI in 2018, and felt 'believed'. Reported rape subsequently;
- Defender was acquitted after trial in 2021 (different date of rape on indictment);
- Pursuer did not succeed: failed on s.19A argument, and court did not accept her account of events.



# PW (AP) v KM [2024] CSOH 85

## PARTY LITIGANT LACUNA

- Defender originally represented: came to represent himself in 2023;
- While pursuer gave evidence on commission at criminal trial, she wanted to give evidence before the proof judge;
- Number of case management hearings to consider issue of cross-examination of pursuer, and ‘similar fact’ witness;
- Vulnerable Witness (Scotland) Act 2004: inserts new s.22B, to prohibit personal conduct where vulnerable witness. Not in force.
- Lady Poole appointed *curator ad litem*



# PW (AP) v KM [2024] CSOH 85

## SIMILAR FACT EVIDENCE

- Lord Bingham, O'Brien v Chief Constable of South Wales [2005] UKHL 26

*“To regard evidence of such earlier events as potentially probative is a process of thought which an entirely rational, objective and fair-minded person might, depending on the facts, follow”*

- Lord Osborne, Strathmore Group Limited v Credit Lyonnais [1994 SLT 1023 (OH)]

1. *the ultimate test for relevancy of evidence is whether the material in question has a reasonably direct bearing on the subject under investigation;*
2. *expediency has a part to play in reaching a decision as to what averment or evidence may be held to be relevant;*
3. *it is unhelpful and possibly misleading to focus attention on the word ‘collateral.’*





# PW (AP) v KM [2024] CSOH 85

## SIMILAR FACT EVIDENCE

### **G v Governors of Fettes Trust [2021] CSOH 128**

- Consideration by Lord Clark of prior decisions in A v B (1895) 22 R 402 (IH 1 Div) and Inglis v National Bank of Scotland Ltd (No 1) 1909 SC 1038

### **Lady Poole's finding**





# PW (AP) v KM [2024] CSOH 85

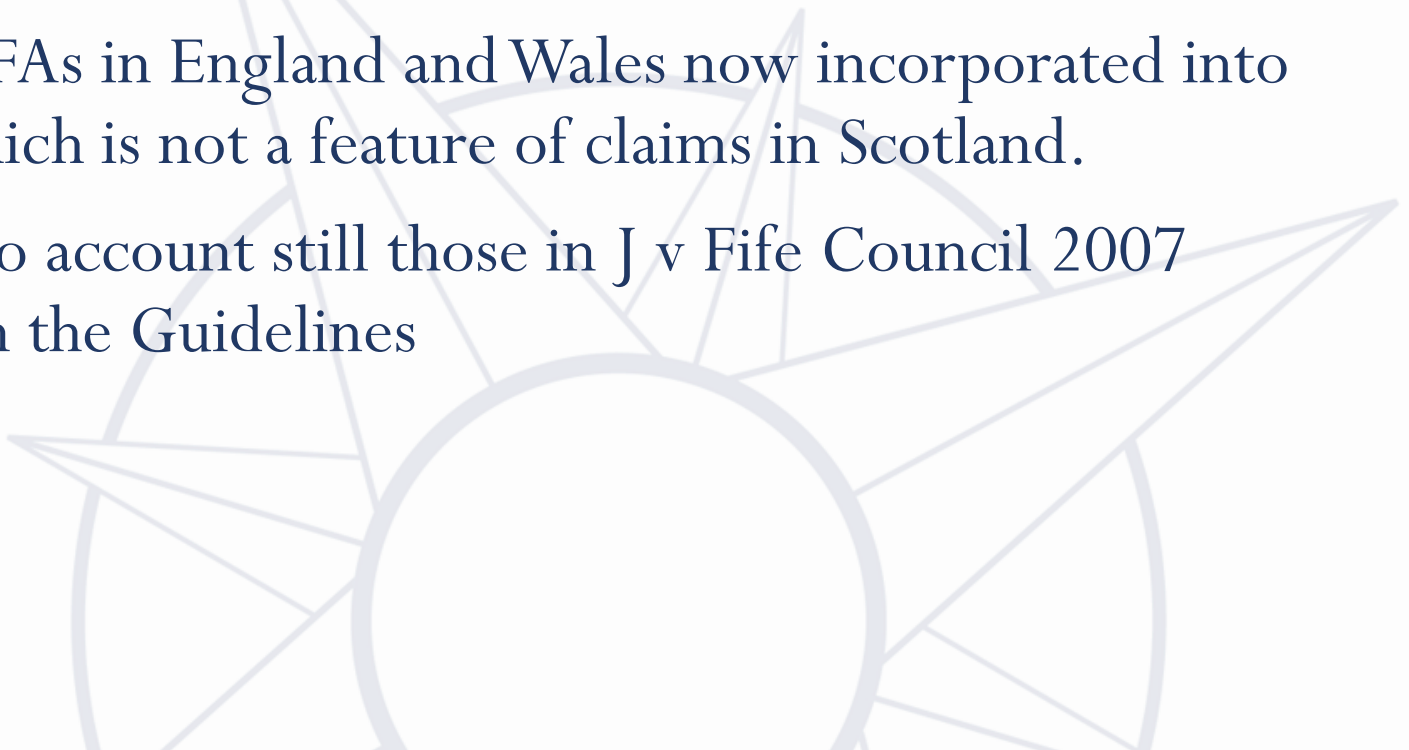
## SIMILAR FACT EVIDENCE

### Lady Poole's Finding

*Requiring an additional source of evidence is thought to reduce the risk of miscarriage of justice, because the presence of that evidence makes it more likely that the charge it corroborates happened. In other words, the overall probative effect of the evidence is considered to be increased by there being more than one source (although the actual probative effect will depend on the circumstances of a particular case). The law governing admission of similar fact evidence in civil cases acknowledges this rationale, because probative effect is taken into account as part of the legal test for admission of similar fact evidence. Nevertheless, other considerations may outweigh potential probative effect.*



# Damages – Solatium

- JCG Guidelines now include a category for Sexual Abuse
  - Remember - Persuasive but not binding
  - Remember 10% uplift for CFAs in England and Wales now incorporated into the guidelines as standard which is not a feature of claims in Scotland.
  - List of factors to be taken into account still those in J v Fife Council 2007 which are largely mirrored in the Guidelines
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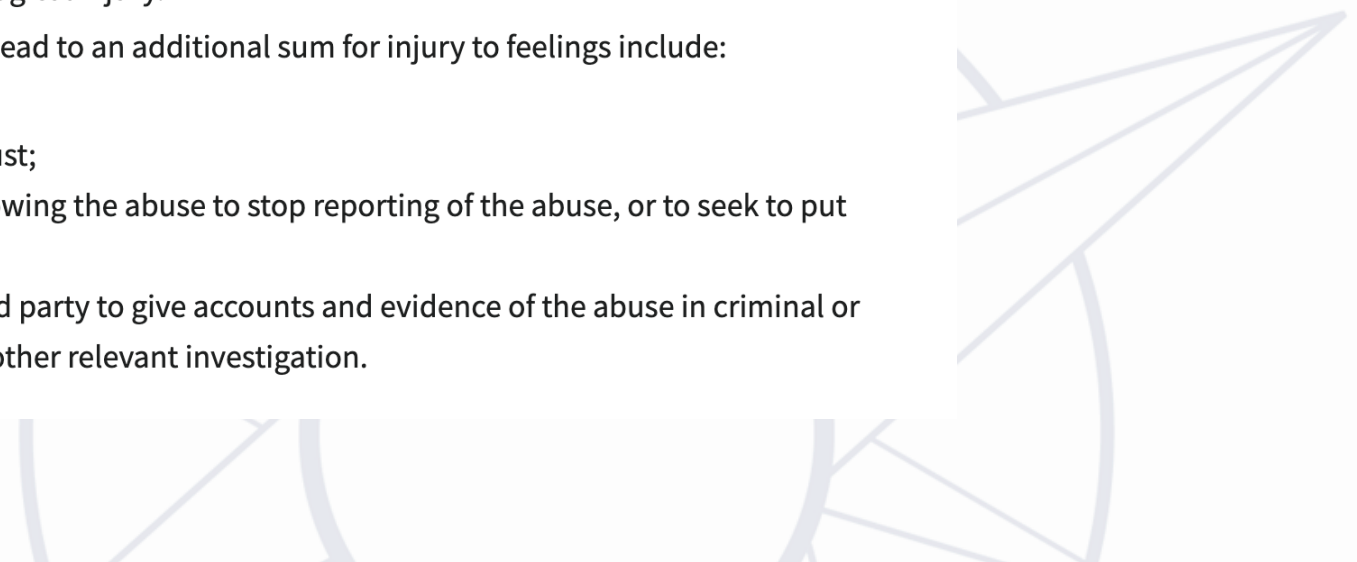


# JCG - Factors

The factors to be taken into account in valuing general damages for the abuse and the psychiatric injury in claims of this nature are as follows:

- (i) the nature, severity, and duration of the abuse and any physical injuries caused;
- (ii) the nature and duration of the psychological injury and its effect on the injured person's ability to cope with life, education, and work;
- (iii) the effect on the injured person's ability to sustain personal and sexual relationships;
- (iv) abuse of trust;
- (v) the extent to which treatment would be successful;
- (vi) future vulnerability;
- (vii) prognosis for psychological injury.

Aggravating features which would lead to an additional sum for injury to feelings include:

- (i) the nature of the abuse;
  - (ii) the level of abuse of trust;
  - (iii) any manipulation following the abuse to stop reporting of the abuse, or to seek to put blame on the injured party;
  - (iv) the need for the injured party to give accounts and evidence of the abuse in criminal or civil proceedings, or in any other relevant investigation.
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# Categories

## (a) Severe

In these cases the injured person will have suffered both serious abuse over a prolonged period and severe or moderately severe and prolonged psychiatric injury. At the upper end the abuse will have had serious effects on their ability to cope with education, work, and to sustain personal and sexual relations. There may be elements of false imprisonment.

**£109,830 to £183,050**

## (b) Moderately Severe

In these cases the injured person will have suffered serious abuse and/or severe or moderately severe and prolonged psychiatric injury. Cases in this category will not have both serious and prolonged abuse and severe or moderately severe and prolonged psychiatric injury but may have one of those features. At the upper end the abuse will have had serious effects on their ability to cope with education, work, and to sustain personal and sexual relations. There may be elements of false imprisonment. Where, despite the seriousness of the abuse and problems caused, the prognosis is good, the lower end of the bracket is appropriate.

**£54,920 to £109,830**

## (c) Moderate

Cases where the abuse is less serious and prolonged and there is a less severe psychological reaction with fewer effects on education, work, or relationships. This bracket also includes cases where there has been a more serious level of abuse, but the psychological reaction is limited and is either resolved or the prognosis is good. There may be some aggravating features.

**£25,100 to £54,920**

## (d) Less Severe

Where the abuse is a lower level of seriousness and short-lived and the psychological effects are mild or resolved quickly, or the prognosis for resolution with treatment is very good. There will be few if any aggravating features.

**£11,870 to £25,100**





# PW (AP) v KM [2024] CSOH 85

## SOLATIUM

- Pursuer sought £100,000 relying on past awards in cases involving rape
- Defender relied on Criminal Injuries Compensation Scheme
- Lady Poole found JC Guidelines ‘more helpful’
- Awarded £50,000, 75% to the past (interest to follow reasoning in JM)
- Reasoning: Rape is a ‘serious abuse’ but the psychological reaction is limited

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